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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MATTHEW SCHEID, et al.,
Plaintiffs,

vs.
FREMONT GENERAL CORPORATION, a
corporation, et al.,
Defendants.

CLASS/COLLECTIVE ACTION

Case No.: C07-06063 CRB

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT AND
DISCOVERY PLAN**

[Local Rule 3-16]

1 Plaintiffs Matthew Scheid and Melton McClanahan (“Plaintiffs”) and Defendants Fremont
 2 General Corporation, Fremont General Credit Corporation, and Fremont Investment & Loan
 3 (“Defendants” or “Fremont”), through their respective counsel, have conferred regarding discovery and
 4 case management issues, as required by Federal Rule of Civil Procedure 26(f), Northern District Civil
 5 Local Rules 16-9(a) and (b), and the Order Setting Initial Case Management Conference and ADR
 6 Deadlines entered by this Court on November 30, 2007.

7 In short, the parties have agreed upon a streamlined disclosure and discovery plan leading up to
 8 mediation with a private mediator on or before July 15, 2008, in an attempt to resolve this putative
 9 class and collective action at an early stage, without extensive and expensive discovery and motion
 10 practice prior to the mediation. Such an approach is particularly appropriate here because of Fremont’s
 11 financial situation, which has been significantly impacted by the subprime mortgage crisis.

12 Accordingly, the parties request that the Court defer setting a trial date and pre-trial schedule,
 13 until after the parties hold their mediation. The parties further request that the Court set a second Case
 14 Management Conference for shortly after the mediation for the parties to report back on the status of
 15 their settlement discussions and to schedule further case management deadlines if necessary at that
 16 time.

17 Below, the parties address the specific Case Management and Discovery Plan items required by
 18 the Standing Order:

19 1. Jurisdiction and Service

20 The Complaint is a putative class/collective action brought by Plaintiffs alleging claims on
 21 behalf of themselves and a putative class of former Account Executive employees of Fremont for, *inter*
 22 *alia*, unpaid overtime wages under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*
 23 and under California law. The parties agree that this Court has federal question subject matter
 24 jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. §§ 1331 and 1337 and Section 16(b) of
 25 FLSA, 29 U.S.C. § 216(b). The parties further agree that this Court has supplemental jurisdiction over
 26 Plaintiffs’ California law claims pursuant to 28 U.S.C. § 1337 because they derive from a common
 27 nucleus of operative facts as the federal claims.

1 Defendants Fremont Investment & Loan was served on December 11, 2007, and Defendant
2 Fremont General Corporation was served on December 12, 2007; and Defendant Fremont General
3 Credit Corporation was served on December 26, 2007. No other parties remain to be served.

4 2. Facts

5 The Complaint was filed in this court on November 30, 2007. Plaintiffs bring this case on
6 behalf of themselves and all Account Executives employed by Fremont in its California locations from
7 November 30, 2003 through May 30, 2007. Plaintiffs have brought this case as an opt-in collective
8 action under FLSA, and as a class action pursuant to Fed. R. Civ. P. 23 for their California law claims.
9 Plaintiffs each filed a "consent to join" the FLSA collective action on December 3, 2007. Five other
10 former employees of Fremont (Gregory Galloway, Duc Uong, Christopher Foster, Masood Ghasemian,
11 and Harry James Harte III) have already opted into the FLSA claims by filing "consent to join" forms
12 in December 2007 and January 2008.

13 Plaintiffs allege that Fremont, among other things, originated, sold, transferred and assigned
14 residential real estate mortgages. In the course of their employment with Fremont, Plaintiffs and the
15 Class Members contacted non-Fremont mortgage brokers and informed them of Fremont's residential
16 loan products. Mortgage brokers obtained applications for Fremont residential loans from borrowers,
17 and forwarded them to the Account Executives, who reviewed them for completeness and submitted
18 them to Fremont's underwriters, who approved or denied the applications. During the loan process,
19 Account Executives would work with mortgage brokers to pre-qualify borrowers, process applications,
20 and sell residential real estate mortgages. Account Executives incurred business expenses in making
21 Fremont's products known to mortgage brokers through, among other things, mailings, cell phone
22 calls, meals, and gifts. Plaintiffs and other "Account Executives" sold Fremont's residential real estate
23 mortgage products until Fremont withdrew from the mortgage lending business in March 2007.

24 The main factual issues in dispute include how account executives were classified, what job
25 duties were performed by Account Executives, whether and/or how many hours Account Executives
26 worked each day and week, how often Account Executives worked through meal periods, and whether
27 Account Executives had any necessarily-incurred business expenses and/or whether any such expenses
28 are reimbursable and/or remain unreimbursed.

1 Given the early nature of these proceedings, the above are the parties' best efforts to identify
 2 the principle factual issues in dispute. The parties reserve the right to identify additional factual issues
 3 in dispute.

4 3. Legal Issues

5 The primary legal issue in dispute is whether Fremont misclassified Plaintiffs and putative class
 6 members as exempt from the federal and California overtime requirements. Plaintiffs contend that
 7 they and the putative class were not subject to any exemption under California or federal law.
 8 Defendants contend that Account Executives were classified and paid as non-exempt employees, but in
 9 any event were legally exempt under one or more of the exemptions from payment of overtime under
 10 California law, including but not limited to the exemption for commission salespersons, and were
 11 exempt under one or more of the exemptions from payment of overtime contained in the FLSA,
 12 including but not limited to the exemption for commission-paid employees and/or highly compensated
 13 workers provided by 29 U.S.C. § 207(i).

14 Additional legal issues include whether Fremont was required to provide off-duty meal periods,
 15 and/or failed to provide them , whether Plaintiffs had any business expenses, and/or whether they had
 16 some legitimate claims for reimbursement which were not paid, whether Fremont failed to pay all
 17 wages due upon discharge, and whether Fremont was required to furnish itemized wage statements,
 18 and/or whether it did so.

19 Other legal issues include:

20 a. What, if any, damages are due under FLSA, including whether the applicable
 21 statute of limitations is two or three years, whether Plaintiffs are entitled to liquidated damages, and the
 22 proper overtime rate, if any, for overtime hours worked;

23 b. What damages, if any, are due under California law, including whether Plaintiffs
 24 were denied meal breaks and whether they can recover for missed meal periods, whether they incurred
 25 and/or can recover unreimbursed business expenses, waiting time penalties, and wage statement
 26 penalties;

27 c. Whether Plaintiffs are entitled to injunctive and declaratory relief;

d. Whether Plaintiffs and the putative class are “similarly situated” for FLSA notice purposes under the FLSA, 29 U.S.C. §216(b); and

e. Whether Plaintiffs meet the prerequisites for certification of a Rule 23 class action for the California law claims.

Given the early nature of these proceedings, the above are the parties' best efforts to identify the principle legal issues in dispute. The parties reserve the right to identify additional legal issues in dispute.

4. Anticipated Motions

As noted above, the parties have agreed to attempt to resolve this case through private mediation, on or before July 15, 2008, after an initial period of discovery. If the case is not settled, Plaintiffs anticipate filing a motion for collective action notice pursuant to 29 U.S.C. § 216(b) to notify similarly situated employees of their right to opt into the claims brought under FLSA and that their statute of limitations continues to run on their FLSA claim until they opt in. Plaintiffs also anticipate filing a motion for class certification of the California law claims (overtime, meal periods, wage statements, and Unfair Competition Law). Plaintiffs may also move to strike or dismiss certain of Defendants' affirmative defenses. Plaintiffs may also seek to add new or more named plaintiffs to this action. Plaintiffs also reserve the right to file dispositive motions based on the discovery produced in the case.

5. Amendment of Pleadings

The parties do not anticipate amending their pleadings at this time. Plaintiffs may move to strike or dismiss certain of Fremont's affirmative defenses, but will defer this motion until after the proposed mediation.

6. Evidence Preservation

Fremont withdrew from the residential mortgage lending business in March 2007 and sold many of its businesses to various buyers. Many of its documents and records have been transferred to the entities that purchased the businesses, and/or stored in different locations. Some of these records were also taken under the custody and control of the Federal Deposit Insurance Corporation prior to the initiation of this action. Because the relevant Fremont business is no longer in operation and

1 collective action and class members have not been employed by Fremont since May 2007, there is no
2 issue of preserving ongoing evidence. Since being served in this action, Fremont has taken steps to
3 ensure that all records and data in its custody and control as of that date are preserved.

4 Plaintiffs have preserved all records and documents in their custody and control.

5 **7. Disclosures**

6 The parties will exchange written initial disclosures by the normal deadline, which is March 28,
7 2008. They will exchange copies of documents on or before April 28, 2008. Initial disclosures will
8 contain the name and contact information for witnesses likely to have discoverable information
9 pertaining to class certification issues; a general description of the documents that may be used to
10 support the claims and defenses that pertain to class certification issues; and Plaintiffs' description of
11 how damages will be computed; and a copy of any insurance agreement that may cover any judgment
12 that may be entered in this action.

13 The extended deadline for document exchange was required to allow Fremont to locate as
14 many relevant documents as reasonably possible. Some documents have been difficult to find due to
15 the closing of Fremont's residential mortgage lending business in March 2007, which caused records
16 to be sent to storage in different locations. The parties have agreed to exchange documents in the form
17 of electronic images on disc.

18 **8. Discovery**

19 On March 13, 2008, counsel for the parties conducted a telephone conference pursuant to and
20 to discuss the matters required by Fed. R. Civ. P. 26(f).

21 **a. Phasing and Subject Matter of Discovery**

22 The parties agree, at least for the time being, that discovery occurring prior to mediation and
23 prior to the Court ruling on class and/or collective action certification ("First Phase Discovery") should
24 focus on (1) enabling the parties effectively to prepare for and participate in a private mediation of this
25 action, (2) the named Plaintiffs, and (3) class and collective action issues. The parties believe that the
26 allowance of approximately four months of discovery in advance of mediation, and prior to class and
27 collective-action certification proceedings, will increase the likelihood that mediation will be
28

1 productive. If the mediation does not fully resolve the case, the parties will continue with First-Phase
 2 Discovery and will promptly proceed to class and collective-action certification proceedings.

3 During First-Phase Discovery, Plaintiffs intend to pursue general written and testimonial
 4 discovery regarding: (1) the named Plaintiffs; (2) Fremont's compliance with the FLSA and California
 5 wage and hour laws; (3) company policies and procedures regarding the classification of Account
 6 Executives; (4) company policies, procedures and practices regarding recording of hours worked by
 7 Account Executives; (5) the job tasks, assignments, duties and functions performed by Account
 8 Executives; (6) formal and informal training received by Account Executives regarding how to
 9 perform their job tasks, assignments, duties and functions; (7) hours worked and compensation paid to
 10 Account Executives; (8) company policies, procedures and practices regarding the provision of meal
 11 periods to Account Executives; and (9) company policies, procedures and practices regarding the
 12 reimbursement of Account Executives' business expenses.

13 During First-Phase Discovery, Fremont intends to conduct written and testimonial discovery
 14 regarding, among other things, the named Plaintiffs' individual and class liability and damages claims
 15 and their contentions regarding class and collective action certification.

16 Second-Phase Discovery, if necessary, will commence after the Court rules on Plaintiffs' FLSA
 17 Section 216(b) and Rule 23 certification motions and, in the event that the Court grants Plaintiffs'
 18 FLSA Section 16(b) motion, after the period established for opt-in filings has expired. The parties
 19 propose that, prior to the commencement of Second-Phase Discovery, the parties would meet and
 20 confer at a second Rule 26 conference for purposes of discussing, among other things, the additional
 21 discovery necessary before trial, as well as additional deadlines for supplementing initial disclosures
 22 and for expert disclosures and for filing motions (including any motion by Fremont to decertify any
 23 class conditionally certified under FLSA Section 216(b)). The parties would then submit a
 24 supplemental Case Management Statement. The parties also request that the Court hold another Case
 25 Management Conference at that time.

26 b. Electronic Discovery

27 Fremont possesses some records in electronic format. Due to the closing of Fremont's
 28 residential mortgage lending business in March 2007 and the FDIC Consent Decree, records are

1 dispersed in the manner already described and Fremont has made and will continue to make its best
2 efforts to locate, review, and produce relevant records.

3 The parties have agreed to produce electronic records in their electronic format, where they are
4 accessible and readable in such format. Where they are not, the parties will cooperate to produce
5 information that is accessible and usable in another format.

6 c. Privilege and Privacy Issues

7 The parties will meet and confer regarding an appropriate protective order to cover privileged
8 documents and information protected by the right to privacy and submit a proposed order to the Court
9 no later than April 30, 2008.

10 In order to facilitate the parties' attempt at settlement, the parties are discussing whether they
11 can come to an agreement on (1) Plaintiffs' discovery request for the names and contact information of
12 putative FLSA collective action members; (2) Fremont's position that such information should be
13 produced to a mutually agreeable court-approved third party administrator to be held unless and until it
14 is directed to mail court-approved FLSA notice; (3) Fremont's position that such information should
15 only be produced for the time period of March 12, 2006 to March 12, 2008; and (4) the tolling of the
16 FLSA statute of limitations for any "similarly situated" individuals for the period leading up to and
17 including the date of mediation. If such an agreement can be worked out, the parties would not have to
18 engage in any contentious discovery, prior to mediation, regarding the names and contact information
19 of putative FLSA collective action members, and Plaintiffs would not have to prepare for filing an
20 FLSA notice motion prior to mediation.

21 d. Discovery Limitations

22 The parties do not propose any changes in the limitations on discovery imposed by the Federal
23 Rules of Civil Procedure or the Local Rules at this time. They will, however, attempt to conduct
24 discovery on a streamlined basis, entertaining informal discovery requests and providing informal
25 responses where feasible and in the interest of efficiency, preserving resources, and moving toward a
26 resolution at the planned mediation session.

1 9. Class Actions

2 As noted above, if the case is not settled as a result of the planned mediation session, Plaintiffs
 3 anticipate filing a motion for collective action notice and a motion for class certification of the
 4 California law claims (overtime, meal periods, wage statements, and Unfair Competition Law). The
 5 scheduling of these motions should be deferred pending the outcome of the planned mediation session.

6 10. Related Cases

7 The parties are not aware of any related cases pending before other Judges of this Court.

8 11. Relief

9 Plaintiffs seek the following relief for themselves and all similarly situated individuals under
 10 FLSA (1) unpaid overtime wages; (2) liquidated damages, or in the alternative, prejudgment interest;
 11 and (3) reasonable attorneys' fees and costs. Plaintiffs also seek to recover under California law (1)
 12 unpaid overtime wages (as restitution and as damages); (2) prejudgment interest; (3) waiting time
 13 penalties; (4) one hour of pay for each day a required meal period was not provided; (5) liquidated
 14 damages of up to \$4,000 per individual for Fremont's failure to furnish required itemized wage
 15 statements; (6) reimbursement of unpaid business expenses; and (7) reasonable attorneys' fees and
 16 costs. Plaintiffs do not seek injunctive relief because Fremont no longer operates its residential
 17 mortgage lending business.

18 The calculation of damages will depend primarily upon the number of hours worked by
 19 Account Executives and their rates of pay. Plaintiffs cannot at this time calculate the monetary
 20 demands because in order to do so, they need information regarding the total number of Account
 21 Executives employed by Fremont, their dates of employment, their compensation, and their hours
 22 worked. Most of the information is in Fremont's control. Plaintiffs must await Fremont's initial
 23 disclosures and conduct additional discovery before they can determine the amount of monetary relief
 24 they will seek.

25 12. Settlement

26 As discussed above, the parties have agreed to attempt to settle this case with the help of a
 27 private mediator, and will hold a mediation session on or before July 15, 2008. The parties have
 28 narrowed the mediation provider to Mark Rudy of Rudy, Zieff & Exelrod or JAMS. The parties will

1 advise the Court of the completion and results of mediation by filing a Certification of Session in
 2 compliance with Local ADR Rule 6-15. The parties do not currently wish to have a settlement
 3 conference with another Judge or Magistrate Judge.

4 13. Consent to Magistrate Judge for All Purposes

5 The parties do not currently wish to consent to a Magistrate Judge for all purposes.

6 14. Other References

7 The parties do not believe this case is suitable for reference to binding arbitration, a Special
 8 Master, or the Judicial Panel on Multidistrict Litigation.

9 15. Narrowing of Issues

10 The parties are not prepared to narrow any issues at the present time through agreement, and do
 11 not believe there are issues to be narrowed by motion. Plaintiffs may move to dismiss certain of
 12 Fremont's affirmative defenses. Fremont intends to amend its answer to clarify some affirmative
 13 defenses and add additional ones. Dispositive motions regarding Fremont's exemption defenses may
 14 be appropriate after sufficient discovery has been conducted.

15 16. Expedited Schedule

16 As noted above, the parties have agreed to attempt to resolve this case through private
 17 mediation, on or before July 15, 2008, after an initial period of streamlined discovery.

18 17. Scheduling

19 As discussed above, the parties believe it is premature to set a discovery cutoff, pretrial
 20 conference and trial date. Instead, the parties request that they be allowed to file a supplemental case
 21 management statement within 30 days after the planned mediation, which shall take place no later than
 22 July 15, 2008.

23 18. Trial

24 Plaintiffs have demanded a jury trial. The parties believe it is premature, prior to the Court's
 25 ruling on Plaintiffs' collective action motion, motion for class certification, and anticipated summary
 26 judgment motions, to consider the length of trial. Such pre-trial motions may focus and streamline the
 27 issues for trial. Plaintiffs also anticipate requesting the Court to bifurcate the trial of liability and
 28 damages in this case. The parties request that they be permitted to file a supplemental Case

Management Statement regarding issues relating to trial, after the Court decides Plaintiffs' notice motion and class certification motion.

19. Disclosure of Non-party Interested Entities of Persons

Each party has filed the “Certification of Interested Entities or Persons” required by Civil Local Rule 3-16 (Plaintiffs filed it on January 10, 2008 and Defendants filed it on March 17, 2008). Plaintiffs report the named parties and the putative class as interested persons. Defendants report themselves as interested parties.

Dated: March 28, 2008

Respectfully submitted,

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